

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

LABORERS' INTERNATIONAL UNION OF )		
NORTH AMERICA, LOCAL 1132, )		
)		
Petitioner, )		
)		
and )		Public Case No. 80-040
)		
PARK HILL R-5 SCHOOL DISTRICT, )		
KANSAS CITY, MISSOURI, )		
)		
Respondent. )		

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the Laborers' International Union of North America, Local 1132, filing a petition for certification as public employee representative of all custodians employed by the Park Hill R-5 School District. The School District contends that those employees designated head custodian and assistant head custodian are supervisors and therefore should be excluded from the appropriate bargaining unit. Local 1132 asserts that the head custodians and assistant head custodians are not supervisors and thus should be included in the unit. On May 11, 1981 a hearing was held in Independence, Missouri at which representatives of Local 1132 and the School District were present. The case was heard by the State Board of Mediation Chairman Mary Gant and Joseph Cointin, employee member, and by agreement of the parties was submitted by transcript to Mr. Herbert Shaw, employer member. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by virtue of Section 105.525, RSMo 1979.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law:

### **STATEMENT OF FACTS**

The Park Hill R-5 School District consists of one senior high school, the district's central office building and annex, two junior high schools, and six elementary schools. The district employs thirty-eight (38) custodians including nine (9) head custodians and three (3) assistant custodians. The assistant director of operations, William Erickson, coordinates the school district's entire custodial staff.

The custodians are assigned as follows:

1. Senior High School - Ten custodians are assigned to the high school, three working the day shift, while seven work nights. One of the custodians assigned to the high school also cleans the central office building and annex located immediately adjacent to the high school. Of the seven night shift custodians, one is designated head custodian and one is designated assistant head custodian.
2. North Junior High School - Five custodians are employed at North Junior High School. Four custodians work the night shift, whereas one works days. Of the four night shift custodians, one is designated head custodian. One additional custodian regularly works four hours at North Junior High School and four hours at South Junior High School. The custodian who works the entire day shift at North Junior High School is designated the assistant head custodian.
3. South Junior High School - Four custodians are assigned to South Junior High School, three working the night shift and one working days. The day shift custodian is designated head custodian. Of the three night shift custodians one is designated assistant head custodian.
4. Elementary Schools - Three custodians are assigned to each of the six elementary schools located within the Park Hill R-5 School District. At each school the head custodian works the day shift while the remaining two custodians work nights.

General Custodial Duties:

(a) Custodians - Custodians perform general cleaning duties, including cleaning classrooms and restrooms, sweeping, dusting, and other similar duties. Custodians are hired to work in a particular school and are assigned to a particular section of the building for which the custodian is responsible. During each work shift, a custodian walks a regular route ("run") during which he cleans, sweeps, dusts, and mops the assigned area. Because most duties are routine, each custodian performs his work without direct supervision.

(b) Head Custodians - The head custodian assigned to the senior high school works from 2:00 p.m. to 10:30 p.m., Monday through Friday. The head custodian is assigned a regular run for which he is allotted approximately six hours to complete. On this run the head custodian performs duties identical to other custodians, such as cleaning, sweeping and vacuuming. The senior high school head custodian does not assign runs to the other custodians. Instead, the runs were established by the assistant director of operations. The head custodian is also responsible for duties connected with various night activities conducted at the school (e.g. basketball games, banquets, etc.). His duties include unlocking the doors at the appropriate time, locking windows, setting up volleyball nets, sweeping the gymnasium and setting up chairs and tables.

The senior high school head custodian receives specific directions from the assistant director of operations, either orally or by written work order, informing him of any night activity and what has to be done in connection therewith. Occasionally the head custodian merely checks with the school principal to ascertain that night's activities.

An additional responsibility of the senior high school head custodian is the checking of other custodians' work to ensure that it has been performed satisfactorily.

The head custodian estimated that he spends approximately 5% of his time checking the other custodians' work. The head custodian will pass on information to other custodians concerning the problems on their particular runs. Such problems are normally brought to the head custodian's attention by the assistant director of operations, school principal or a teacher. The head custodian also checks to see if all the night custodians report to work. If one custodian fails to report, the absent custodian's duties are split among the other custodians. If a custodian must work overtime to fill in for another, the other custodians rotate such duties. The head custodian is responsible for keeping a list, in accordance with school policy, so that each custodian is allotted an equal amount of overtime. Should it be necessary to call in an off duty custodian as a substitute, the head custodian will inform the assistant director of operations or school principal, who will see that another custodian is called in. The senior high school custodian has never called in a substitute without the approval of the assistant director of operations or principal.

Junior High School Head Custodians: The head custodian at North Junior High School works the night shift along with three other custodians. The head custodian's duties are essentially the same as the other night custodians, in that each is responsible for cleaning an assigned area of the building. Additional duties include unlocking doors and setting up tables in connection with special activities. The North Junior High School head custodian is also responsible for investigating incidents of vandalism.

The South Junior High School head custodian works the day shift. The only other custodian present during the day is one custodian who works four hours. Upon arriving at work the head custodian inspects the premises for vandalism, opens a door, turns on the lights, and generally sees that the school is ready for students. The South Junior High School head custodian then performs his run, after which he works in the

cafeteria during lunch period. The head custodian also informs the night custodian as to night activities and what, if anything, needs to be done in connection therewith.

Elementary School Head Custodians - Each of the head custodians of the six elementary schools perform essentially the same work activities. The head custodian arrives at his building at 7:00 a.m., unlocks the doors, fills the soda machine, and checks the rooms to see if the night custodians satisfactorily completed their work. Should there be a problem with work performed the night before (e.g. a room was not properly cleaned), the head custodian leaves a note informing the night custodian of the discrepancy. After checking the rooms, which takes less than one-half hour, the head custodian will set up tables in the cafeteria for breakfast. After breakfast, the head custodian completes his run, assisting teachers with any problems that might arise. The head custodian also determines if custodial supplies need to be ordered. The head custodian sets up tables for lunch and cleans the cafeteria after the students finish eating. During the remainder of the day, the head custodian is available to clean up any spills or assist teachers as requested.

The head custodian leaves the building at 3:30 p.m., usually before the two night custodians arrive. The head custodian has no responsibility in connection with night activities held at the school. The head custodian does not assign the night custodian duties. Instead, the night custodians are experienced personnel familiar with their duties and need no instruction. In the case of a newly hired custodian, the custodian usually receives instruction from the other night custodian as to what his responsibilities are.

Assistant Head Custodians - There are three employees designated assistant head custodians. The assistant head custodians have essentially the same duties as other custodians as described above. Only when a head custodian is absent does the

assistant head custodian assume the responsibilities of the head custodian. No evidence was presented as to how often the head custodians are absent.

Hiring, Firing, Promotion: The assistant director of operations has the authority to hire, fire and promote custodians. Although the assistant director of operations testified that the head custodians make recommendations concerning the hiring of new employees, the record indicates that the head custodian's recommendations consists primarily of supplying information to the assistant director of operations regarding the probationary employee's quality of work. No formal evaluations are ever made by a head custodian. The record indicates that on one occasion an employee was promoted to the senior high school assistant head custodian position based upon the recommendation of the head custodian. On another occasion a custodian was discharged because of the poor work performance. The head custodian's involvement in the firing consisted of merely informing the assistant director of operations as to whether the involved custodian's work was being done satisfactorily on those days the director of operations could not inspect the work personally.

Discipline: Custodian disciplinary problems rarely occur in the Park Hill R-5 School District. When problems do arise, they are dealt with on an informal basis. Occasionally the assistant director of operations receives complaints from teachers concerning work done by certain custodians. The assistant director of operations will inform the head custodian of the problem or will directly contact the custodian involved. Other times the assistant director will write a memo concerning a problem area and deliver it to the head custodian who will relay the information to the custodian.

A head custodian or assistant head custodian has little authority to discipline another custodian. Although a head custodian is authorized to send a custodian home who comes to work in an intoxicated condition, the assistant director of operations

stated that not all head custodians were aware of this authority. Moreover, a head custodian has never exercised this authority in that no custodian has ever been sent home.

Grievance Procedure: The assistant director testified that a custodian with a complaint would approach a head custodian as the first step in the grievance procedure. However, the head custodians have never been instructed as to their role in any grievance procedure and there is no evidence that a custodian has ever gone to a head custodian or assistant head custodian concerning a complaint with the employer.

Level of Pay: All head custodians and assistant head custodians are paid on the same salary schedule as other custodians, there being a base pay with increases based on time in service. The head custodian at the high school is compensated \$50 per month more than the custodians whereas the elementary school head custodians receive \$25 per month more than the other custodians. The entire custodian staff, including the head custodians and assistant head custodians, receive extra compensation for overtime.

### **CONCLUSIONS OF LAW**

Local 1132 has petitioned to be certified as public employee representative of a bargaining unit comprised of all head custodians, assistant head custodians and custodians employed by the Park Hill R-5 School District. Local 1132 argues that all of the aforementioned employees share a community of interest and should be included in the appropriate bargaining unit. The School District contends that the head custodians and assistant head custodians are supervisory employees acting directly or indirectly in the interest of the employer school district in relation to other employees.

The State Board of Mediation recognizes that certain employees possess sufficient supervisory status to warrant their exclusion from a bargaining unit of other employees. In St. Charles Professional Firefighters Local 1921 v. City of St. Charles,

Public Case No. 79-024; and IBEW Local 1439 AFL-CIO vs. City of Piedmont, Public Case No. 79-044, among other cases, this Board has articulated factors to consider in determining the supervisory status of employees. The effort is to determine whether a particular employee is a true "supervisor", whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees or whether the employee is merely a working foreman whose responsibilities would not justify exclusion from an appropriate bargaining unit. The factors to be considered in reaching this determination include (1) the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees; (2) the authority to direct and assign the work force including a consideration of the amount of independent judgment or discretion involved in such decisions; (3) the number of employees supervised and the number of other persons exercising greater, similar or lesser authority with respect to the same employees; (4) the level of pay, including an evaluation of whether a person is paid for their skill or for their supervision of other employees; (5) whether a person primarily supervises an activity or primarily supervises other employees; (6) whether a person is a working supervisor or whether he or she spends a substantial majority of work time overseeing others. An application of the factors recited above to the facts of this case follows:

(1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees: The record indicates the head custodian and assistant head custodian play no significant role in the hiring, promotion, transfer, discipline or discharge of other custodians. The head custodians are involved in the hiring of employees only in that they inform the assistant director as to the quality of work performed by newly hired custodians who are placed on probationary status for ninety days. The assistant director of operations also discusses the work of the



probationary employee with the school principal who is aware of any performance problems that might exist. Although the information received from the head custodian may be used in deciding to retain an employee as a permanent custodian, the information received amounts to nothing more than informing the assistant director of operations if the work has been done and, therefore, cannot be considered a recommendation as to whether a custodian should be hired. Given that the quality of performance of work is evaluated by teachers and the school principal, with whom the assistant director of operations consults, it is clear that the head custodians or assistant head custodians do not effectively recommend the hiring of new employees.

As for promotion of custodians, there is evidence of only one occasion where the senior high school head custodian recommended that an employee be promoted to assistant head custodian. As a general rule, however, a head custodian has nothing to do with custodian promotions. The head custodians and assistant head custodians do not participate in any formal evaluation of the custodians that would be used for promotion purposes. The existence of an isolated occurrence in which a head custodian was consulted in determining which custodian was to be promoted to assistant head custodian is not sufficient to ascribe supervisory status to the head custodians. The head custodians and assistant head custodians have never transferred a custodian from one school to another. Also, the head custodians have no significant role in the discharge of custodians. The record indicates that on one occasion a head custodian was questioned by the assistant director of operations concerning the work of a custodian who had a history of performance problems and who was subsequently discharged. This incident was the only evidence of a head custodian ever being involved in the discharge of another custodian. Clearly, the head custodian's function was only to report on the involved custodian's performance on those days the assistant

director of operations was unable to personally inspect the work. Accordingly, such a limited role does not constitute the authority to effectively recommend the discharge of an employee.

There is no evidence that a head custodian or assistant head custodian has ever disciplined another custodian. When the assistant director of operations receives a complaint concerning a custodian's work, the assistant director of operations will either contact the head custodian or the involved custodian. Where the head custodian is contacted, he merely informs the custodian of the problem discussed. Although the head custodians are in theory authorized to send a custodian home for arriving in an intoxicated condition, such authority has never been exercised. Furthermore, many head custodians are unaware of such authority in that the school district has never informed them of the authority. In short, the head custodian and assistant head custodian's role in disciplining other custodians does not indicate supervisory status.

(2) The authority to direct and assign the work force including a consideration of the amount of independent judgment or discretion involved in such decisions. Each custodian is assigned to a particular school and remains in that school year round. The custodians report to work and begin their runs without conferring with anyone. Because the custodial staffs are generally made up of experienced personnel, the head custodian and assistant head custodian spend none of their time directing the daily activities of the custodians. Occasionally, minor changes in the custodians' runs are made by the head custodian, but such changes are infrequent and insubstantial.

At the senior high school it is sometimes necessary for a custodian to work overtime to fill in for an absent custodian or to assist with a weekend activity. The head custodian determines who shall work based on a rotating list which equally distributes the amount of overtime worked by each custodian. Little, if any, independent judgment

is exercised by the head custodian in assigning such work. To the contrary, the head custodian and assistant head custodian have little authority to direct and assign the work force in any manner. Accordingly, the head custodian and assistant head custodian cannot be considered supervisors in this respect.

(3) The number of employees supervised and the number of other persons exercising greater, similar or lesser authority with respect to the employees: The small custodial staff assigned to each of the schools supports the conclusion that the head custodian and assistant head custodian are not true supervisors. Moreover, the record indicates that the head custodian and assistant head custodian exercise little, if any, authority with respect to the employees.

(4) The level of pay, including an evaluation of whether a person is paid for their skill or for their supervision of other employees: All custodial staff employees receive the same base pay, which increases with time in service. Although the high school head custodian and elementary school head custodians receive additional compensation (\$50 per month and \$25 per month respectively) the additional amount is not sufficient to consider them supervisors. Important is that all custodians are paid on the same basis and compensated for overtime. The extra wages received by the head custodian and assistant head custodian are compensation for the few additional responsibilities taken on by them, not because they supervise other employees.

(5) Whether a person primarily supervises an activity or primarily supervises other employees: The head custodian and assistant head custodian spend a substantial majority of their time performing cleaning functions as do other custodians. Because the custodians' duties are generally routine and the custodial staff is comprised of experienced custodians, the head custodian and assistant head custodian do not oversee the custodians' work as it is done. Instead, the head custodian merely checks

to ensure that the work has been completed. As such, the Board must conclude that the head custodian and assistant head custodian neither supervises an activity nor supervises employees.

(6) Whether a person is a working supervisor or whether he or she spends a substantial majority of time merely overseeing employees: The head custodian and assistant head custodian spend a substantial majority of time performing routine custodial activities. The South Junior High School head custodian estimated that only 5% of his time is spent checking the work of other custodians. The elementary school head custodian spends less than one-half hour of an eight hour shift checking the work of others. Clearly, the great amount of time performing routine custodial duties supports the conclusion that the head custodians and assistant head custodians are not supervisors.

### **CONCLUSIONS**

Upon careful review of the foregoing factors, the Board concludes that the head custodians and assistant head custodians are not true supervisors in that they do not act directly or indirectly in the interest of the employer in relation to other employees. They play no significant role in the hiring, promotion, transfer, discipline or discharge of other employees. They have little authority to direct and assign the work of the custodians. Further, the head custodian and assistant head custodian are paid only slightly more than the other custodians. Most importantly, the head custodian and assistant head custodian spend substantially all of their time performing routine custodial duties, and have little authority with respect to other custodians. Consequently, their authority, what little there exists, is closer to that of a leadsman rather than a true supervisor.

### **DECISION**

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

All head custodians, assistant head custodians and custodians of the Park Hill R-5 School District.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but no later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Petitioner, Local 1132.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Signed this 19th day of August, 1981.

(S E A L)

STATE BOARD OF MEDIATION

/s/ Mary Gant

Mary Gant, Chairman

/s/ Herbert L. Shaw

Herbert Shaw, Employer Member

/s/ Joseph Cointin

Joseph Cointin, Employee Member